



HISTORIC
FRANKLIN
TENNESSEE

ITEM #9
WRKS
07/08/14

MEMORANDUM

July 1, 2014

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator *Eric*
Abby Gambill, Traffic Operations Center
Kristen L. Corn, Staff Attorney

SUBJECT: **Acknowledgement of Transit Services Agreement Between Franklin Transit Authority and TMA Group**

Purpose

The purpose of this memo is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning the new contract between the Franklin Transit Authority and TMA Group.

Background

As you are likely aware, the TMA Group has been the manager of the Franklin Transit Authority since its inception. The most recent contract ran from July 1, 2009 through June 30, 2014.

In accordance with federal, state and local laws, the contract for management and operations of transit services for the Franklin Transit Authority was put out to bid by the Engineering Department (on behalf of the Franklin Transit Authority) in the following manner:

- April 7, 2014
 - The bid package was issued and placed on the City website.
- April 16, 2014
 - The bid package was advertised in the Tennessean.
 - Only 2 groups advised the City of interest.
 - TMA Group, Franklin, TN
 - National Express Transit Corporation, Cincinnati, OH
- April 28, 2014
 - All questions concerning the bid package were due to the City by 2:00 PM.
- April 29, 2014
 - An addendum to the bid package was posted on the City's website and emailed to all known interested parties.
- May 2, 2014
 - All bid package submittals were due by 2PM and were opened at that time.
 - Only TMA Group submitted a proposal. Proposal was checked for compliance.
- May 15, 2014

City staff brought the TMA Group's proposal to the Franklin Transit Authority Board for review. The board members voted unanimously to continue with contract negotiations between TMA Group and Franklin Transit Authority.



HISTORIC
FRANKLIN
TENNESSEE

MEMORANDUM

- June 19, 2014
 - The Franklin Transit Authority Board unanimously approved the contract.

The contract is identical in substance to the previous contract between the two parties. The new term will be July 1, 2014 through June 30, 2019.

Financial Impact

This contract does not modify any previously approved budget of the City of Franklin.

Recommendation

This item is presented to the Board of Mayor and Aldermen for informational purposes only; there is no required Board action for this item.

AGREEMENT FOR THE PURCHASE OF TRANSIT SERVICES

COF Contract No. 2014-0077

THIS AGREEMENT is made and entered into this 19 day of June, 2014, by and between the FRANKLIN TRANSIT AUTHORITY, hereinafter referred to in this Agreement as "AUTHORITY" and THE TRANSPORTATION MANAGEMENT ASSOCIATION GROUP, hereinafter referred to in this Agreement as "CONTRACTOR".

WHEREAS, the AUTHORITY, as a municipal transit authority created by Resolution of the Board of Mayor and Alderman on May 5, 2003 for the CITY of Franklin ("CITY"), is granted full power & authority to acquire, purchase, construct, extend, improve, maintain, own and operate a system of suitable vehicles primarily for the transportation for hire of passengers and incidental activities, including without limitations, automobiles, buses, trolleys, and vans and other vehicles, carbons, terminals, garages, repair shops, and other necessary buildings and lands, fixtures, bus stops, rights-of-way, and easements and all other powers enumerated in T.C.A. §7-56-101 et seq. and all powers and things necessary, usual or proper for such a system for the transportation for hire of passengers upon any and all streets in the CITY and upon any or all highways and streets within Williamson County upon agreement with the County in compliance with its laws, and such private charter service as the Authority deems proper, has determined that it is in the best interest of its riding public and the CITY to utilize private sector transportation to provide transit management and operations; and

NOW, THEREFORE, in consideration of the promises and agreements set forth in this Agreement, the AUTHORITY and CONTRACTOR HEREBY AGREE as follows:

ARTICLE 1-GENERAL WARRANTIES

Section 1.1

The CONTRACTOR hereby covenants and agrees to perform certain services for the benefit of the AUTHORITY and in consideration thereof, the AUTHORITY agrees, through the CITY's annual budgeting process, to provide a subsidy to the CONTRACTOR accordance with the terms and conditions set forth herein. The services shall be known as "TRANSIT SERVICES," and shall operate until June 30, 2019. This contract shall commence on July 1, 2014.

Section 1.2

Contractor represents and warrants that it is a non-profit 501(c)(3) corporation duly incorporated, validly existing and in good standing under the laws of Tennessee and is qualified to do business in Tennessee. CONTRACTOR has all the requisite corporate power and authority to execute, deliver and perform its obligations under this agreement. In connection with its obligations under this Agreement, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses.

ARTICLE 2- COMPENSATION

Section 2.1 Compensation

The AUTHORITY shall pay Contractor for all of the costs for providing TRANSIT SERVICES,

including planning, marketing, administration, management, and grant supervision, as follows: The **AUTHORITY** shall pay **CONTRACTOR** a set amount per month based upon the budget amount approved and authorized for **TRANSIT SERVICES** by the **CITY**.

Section 2.3 Invoices to the AUTHORITY

By the tenth (10th) day of the month, the **CONTRACTOR** shall submit a monthly invoice to the **AUTHORITY** for Services performed the previous month. The **AUTHORITY** shall pay the **CONTRACTOR** within fifteen (15) days of receipt of an invoice. Monthly reports due the **AUTHORITY** are to be included with the invoice. The invoice shall provide a detailed accounting of the number of Vehicle-Hours provided and Revenue Vehicles used.

Section 2.4 The AUTHORITY Credits

If it is determined that **CONTRACTOR** has received any payment not authorized by this Agreement, the amount of such payment shall be deducted from the next payment due or, if no such payment is due, said amount shall be repaid to the **AUTHORITY** within thirty (30) days following written demand therefore by the **AUTHORITY**.

ARTICLE 3- SCOPE AND DESCRIPTION OF SERVICES

Section 3.1 Transportation Services

During the term of this Agreement, **CONTRACTOR**, acting as an independent **CONTRACTOR** of the **AUTHORITY** and not as an agent of the **AUTHORITY**, agrees to provide **transit service** according to the route maps and schedules approved by the **AUTHORITY**.

In providing transportation services the **CONTRACTOR** shall:

- (1) Take all steps necessary to ensure the safety and reasonable comfort and convenience of the public;
- (2) Charge only such fares as may be directed by the **AUTHORITY**.
- (3) Comply with all policies, practices, procedure, terms and conditions as may be approved by the **AUTHORITY**;
- (4) Comply with all terms and conditions for use of federal, state and other funds receiving by the **AUTHORITY** or **CONTRACTOR**;
- (5) Comply with all applicable provisions of federal, state or local law.

Section 3.2 Changes in Transportation Services

A. **CONTRACTOR Initiated Changes.** **CONTRACTOR** shall not, without the prior written approval of the **AUTHORITY**, initiate or permit any change to the Transportation Services.

CONTRACTOR may propose changes in the Transportation Services by presenting a proposal therefore in writing to the **AUTHORITY** at least sixty (60) days in advance of the date on which the change is proposed to take effect. the **AUTHORITY** shall either approve or disapprove the request in writing within thirty (30) days after it receives the request. Notwithstanding the foregoing, **CONTRACTOR** may implement minor operational changes that will neither:

- (1) Increase any Reimbursable Expenditure;
- (2) Affect any fare or system for passes, transfers, interconnections, or similar programs; nor,

- (3) Substantially change any route or schedule if **CONTRACTOR** first gives the **AUTHORITY** at least thirty (30) day notice of its intent to make such minor change and if **THE AUTHORITY** has not disapproved such proposed minor change in writing within fifteen (15) day following receipt of such notice. **CONTRACTOR** may, in addition, make minor operational changes of an emergency nature without the **AUTHORITY** approval; provided, however, that no such change shall be made that would increase any Reimbursable Expenditure and provided, further, that **CONTRACTOR** shall give the **AUTHORITY** notice of each such minor change as soon as possible, and in no event later than twelve (12) hours after it is made.

- B. The AUTHORITY Initiated Route and Schedule Changes.** The **AUTHORITY** may require changes in routes and schedules specified in Section 3.1 above, but only on the following conditions:
- (1) Unless some other notice is permitted or required or unless **CONTRACTOR** shall agree to some lesser notice, the **AUTHORITY** shall provide **CONTRACTOR** at least sixty (60) days written notice of the required change; and
 - (2) The **AUTHORITY** shall have first complied with any special procedures or standards made applicable to the required change by any applicable law or regulation or by any other agreement between the **AUTHORITY** and **CONTRACTOR**; and
 - (3) The **AUTHORITY** shall have first approved an amendment to the Approved Budget or shall otherwise have provided sufficient additional funding, to fairly reflect any increase in the Reimbursable Expenditures caused by the required change.

In the event **CONTRACTOR** disputes the **AUTHORITY**'s compliance with either Paragraph 3.2B(2) or 3.2B(3) above, **CONTRACTOR** may request a review of the matter by the BOMA. If the BOMA determines that there is no failure by the **AUTHORITY** to comply with either Paragraph 3.2B(2) or 3.2B(3) above, **CONTRACTOR** shall then implement the required change not later than the expiration of the notice period required pursuant to Paragraph 3.2B(1) above, subject, however, to **CONTRACTOR**'s remedies as set forth in Article 13 of this Agreement.

- C. Other The AUTHORITY Initiated Changes.** Except for changes in routes and schedules, the **AUTHORITY** may require any change in the Transportation Services specified in Section 3.1 above upon reasonable written notice to **CONTRACTOR**.

- D. THE AUTHORITY** Nothing in this Section 3.2 shall be construed to require the **AUTHORITY** to approve any change to the Transportation Services specified in Section 3.1, and the **AUTHORITY** may withhold its approval of any such change, at its sole discretion.

Section 3.3 Other Services

Throughout the Agreement Term, **CONTRACTOR** shall provide all ancillary and supporting services necessary or appropriate to providing the Transportation Services and to complying with the requirements of this Agreement, including, the following services:

- (1) **CONTRACTOR** shall maintain all equipment and supplies used in providing, or supporting, the Transportation Services in first-class condition and shall specifically comply with the equipment maintenance responsibilities;
- (2) **CONTRACTOR** shall comply with the reporting and record keeping requirements set forth in this Agreement.
- (3) **CONTRACTOR** shall comply with its obligations with respect to accounting and budgeting

as set forth in this Agreement.

Section 3.4 Real Property and Facilities

Unless otherwise expressly provided this Agreement, **CONTRACTOR** shall, in providing the Transportation Services and Other Services utilize the garages, yards, and related storage facilities, as specified and authorized by the **AUTHORITY**.

Section 3.5 Permitted Variations in Transportation Services Due to Force Majeure

CONTRACTOR shall not be in default of its obligation to provide Transportation Services to the extent that it is unable to provide such Services as a result of abnormally severe weather or road conditions, strikes or other labor stoppages, unavailability of sufficient Revenue Vehicles through no fault of the **CONTRACTOR** and other events and conditions that are beyond the reasonable ability of **CONTRACTOR** to control or remedy and that render provision of such Service impossible or not reasonably feasible. In any such case, **CONTRACTOR** shall provide such modified or reduced Services as are practicable under the circumstances and shall use all reasonable efforts to restore full Services in accordance with this Agreement at the earliest possible time. Immediately upon the occurrence of, or the threat of the imminent occurrence of, any such event or condition, and prior to implementing any reduced or modified service, **CONTRACTOR** shall notify the **AUTHORITY** by telephone, with written confirmation as soon as possible thereafter, of:

- (1) The nature of the event or condition;
- (2) The actual or expected time of the occurrence of the event or condition and its expected duration;
- (3) The impact of the event or condition on Transportation Services;
- (4) The modified or reduced service that **CONTRACTOR** proposes to provide during the continuation of the event or condition;
- (5) The **CONTRACTOR**'s plan to notify potential users of the Transportation Service of any disruption that may result; and
- (6) The steps **CONTRACTOR** proposes to take to restore full service.

Section 3.6 Contract Monitoring

- A. **THE AUTHORITY** will appoint a Key Contact/ Project Manager to work with the **CONTRACTOR**.
- B. **THE AUTHORITY** will work with the **CONTRACTOR** to establish and monitor contract performance annually, based on Service Delivery, Customer Service, Quality Assurance, Cost Effectiveness, and Productivity.
 - (1) Service Delivery will assess road calls, miles between accidents, and service interruptions.
 - (2) Customer Service will evaluate complaints and commendations, passenger approval, and marketing outreach.
 - (3) Quality Assurance will assess preventative maintenance, bus cleanliness, and safety.
 - (4) Cost Effectiveness will have as performance standards, passengers per vehicle hour, average fare, revenue hours and total vehicle hours.

ARTICLE 4 - EQUIPMENT

Section 4.1 Provision of Equipment by the AUTHORITY or the CITY

- A. THE AUTHORITY Rights With Respect to CITY Vehicles and Other CITY Equipment. This Agreement applies to all CITY Equipment provided by the AUTHORITY to CONTRACTOR at any time. The AUTHORITY reserves the absolute right, in its sole discretion, (1) to determine the number and type of CITY Vehicles and other CITY Equipment to provide to CONTRACTOR; (2) to substitute or replace any CITY Vehicles or Other CITY Equipment provided to CONTRACTOR; and (3) to direct the return to CITY or its designee of any or all CITY Vehicles or Other CITY Equipment at any time, provided, however, that in the absence of fault by CONTRACTOR or other good cause, the AUTHORITY shall not take action under this Paragraph that would have the effect of preventing or materially and adversely affecting the ability of CONTRACTOR to provide the Transportation Services and Other Services.
- B. The CITY Equipment Provided. The AUTHORITY will provide or has already provided CONTRACTOR with the CITY Revenue and Nonrevenue Vehicles listed in Exhibit A. CONTRACTOR acknowledges that the CITY Revenue Vehicles listed in Exhibit A, together with the CONTRACTOR Vehicles listed in Exhibit A, if any, are adequate and sufficient to provide and support the Transportation Services. CONTRACTOR further acknowledges that it has, in addition, received various items of Other CITY Equipment from the AUTHORITY, and CONTRACTOR agrees to comply with all the AUTHORITY procedures for handling such other the AUTHORITY Equipment.
- C. Inventory and Documentation. CONTRACTOR agrees to cooperate fully with the AUTHORITY in developing and maintaining an accurate inventory of all CITY Equipment from time to time in the possession of CONTRACTOR. CONTRACTOR shall complete and process all documentation necessary to evidence and record the receipt, possession, return, or transfer of any CITY Equipment coming into, being in, or leaving its possession. Copies of all such documentation with respect to CITY Vehicles shall be attached to and become part of Exhibit A.
- D. No Consideration. CONTRACTOR shall not be required to pay any separate consideration for the use of the CITY Equipment during the Agreement Term.
- E. CONTRACTOR Acceptance of CITY Equipment. CONTRACTOR shall accept delivery of CITY Equipment at such times and places within the territory of the CITY as the AUTHORITY shall designate upon notice to CONTRACTOR that such Equipment is available for delivery.
- F. Training of CONTRACTOR Personnel. The AUTHORITY's contract for the purchase of equipment requires the manufacturer of such items to provide training in the use of such items to personnel of CITY and CONTRACTOR. CONTRACTOR shall, upon notice from the AUTHORITY, require its personnel to attend such training.
- G. CITY Equipment Returns and Substitutions. Any CITY Equipment that the AUTHORITY designates to be returned or transferred shall, upon reasonable notice, be delivered by CONTRACTOR at the time and to the place designated by the AUTHORITY. CONTRACTOR also shall accept delivery of any substitute CITY Equipment at the time and place designated by the AUTHORITY. All terms and conditions of this Agreement shall apply to such substitute CITY Equipment. This right of the AUTHORITY is limited by the terms of model Paragraph 4.1A (3),

which provide that the **AUTHORITY** cannot prevent or materially adversely affect the **CONTRACTOR**'s provision of Transportation Services and Other Services.

- H. The **AUTHORITY** Right to Repossess **CITY** Equipment. Upon the failure of **CONTRACTOR** to return or deliver any **CITY** Equipment as directed by the **AUTHORITY**, or if **CONTRACTOR** fails to use, repair, or maintain any **CITY** Equipment as required by this Agreement, **CONTRACTOR** shall permit the **AUTHORITY**, without demand, legal process, or a breach of the peace, to enter any premises under the control of **CONTRACTOR** where the **CITY** Equipment is or may be located and to take possession of and remove the **CITY** Equipment. **CONTRACTOR** shall not prosecute or assist in the prosecution of any claim, suit, action, or other proceeding arising out of any such repossession by the **AUTHORITY**. **CONTRACTOR** shall reimburse the **AUTHORITY** for any and all costs incurred by the **AUTHORITY** in connection with actions taken by the **AUTHORITY** pursuant to this subsection. Such costs shall not be Reimbursable Expenditures under this Agreement.
- I. **CITY** Equipment Inspection. The **AUTHORITY** shall have the right to inspect any and all **CITY** Equipment or cause any or all **CITY** Equipment to be inspected at any time, with or without prior notice to **CONTRACTOR**, provided, however, that unless the **AUTHORITY** determines in its sole discretion that emergency conditions or factors affecting safety or security require otherwise, the **AUTHORITY** shall give at least twenty-four (24) hour notice of any such inspection. The **AUTHORITY** shall also have the right to demand from time to time a written statement from **CONTRACTOR** setting forth the condition of the **CITY** Equipment or any part of it. **CONTRACTOR** shall furnish such a statement to the **AUTHORITY** within ten (10) days after receipt of the **AUTHORITY**'s demand therefore. Should the **AUTHORITY** or its designee determine, in its sole discretion that any **CITY** Equipment has not been maintained in accordance with this Agreement, the **AUTHORITY** or its designee shall report all deficiencies to **CONTRACTOR** in writing. Except for safety-related deficiencies, which shall be corrected as soon as reasonably possible and prior to placing the Vehicle in service, **CONTRACTOR** shall have thirty (30) days to correct deficiencies.
- J. Return of **CITY** Equipment and Related Records Upon Termination. Immediately following the Agreement Term, **CONTRACTOR** shall surrender and deliver to the **AUTHORITY** and the **CITY** all **CITY** Equipment and related records as required by Section 13.5 of this Agreement.
- K. Title to **CITY** Equipment. **CONTRACTOR** acknowledges and agrees that **CITY** owns all the **CITY** Equipment. **CONTRACTOR** acknowledges that pursuant to Resolution the city authorized the **AUTHORITY** to "acquire , purchase, construct, extend, improve, maintain, own and operate a system of suitable vehicles primarily for the transportation for hire of passengers and incidental activities, including without limitations, automobiles, buses, trolleys, and vans and other vehicles, carbons, terminals, garages, repair shops, and other necessary buildings and lands, fixtures, bus stops, rights-of-way, and easements and all other powers enumerated in T.C.A. §7-56-101et seq. and all powers and things necessary, usual or proper for such a system for the transportation for hire of passengers upon any and all streets in the **CITY** and upon any or all highways and streets within Williamson County upon agreement with the County in compliance with its laws, and such private charter service as the Authority deems proper". Nothing contained in this Agreement shall affect **CITY**'s absolute ownership of and title to the **CITY** Equipment, such ownership and title being hereby expressly reserved to and retained by **CITY**. **CONTRACTOR** shall not:
- (1) Obtain, acquire, or otherwise be construed to own any property or other interest in the **CITY** Equipment except the right to use it for the purposes and on the conditions stated in

this Agreement during the Agreement Term;

- (2) Sell, assign, or otherwise grant any party any right to own, use, or possess the CITY Equipment;
- (3) Permit the CITY Equipment, or any part of it, to pass from their possession and control of CONTRACTOR, unless directed to do so in writing by the AUTHORITY; or
- (4) In any manner, allow or permit the CITY Equipment, or any part of it, to be pledged, seized, or held for any tax, debt, lien, or other obligation. Should the CITY Equipment, or any part of it, become subject to or encumbered by any tax, debt, lien, or other obligation during the Agreement Term, or before the actual delivery of the CITY Equipment to CITY after the Agreement Term, CONTRACTOR shall, subject to its right to in good faith protest any such tax, debt, lien, or other obligation, promptly pay or discharge such tax, debt, lien, or other obligation, and relieve such CITY Equipment from the encumbrance thereof.

L. Licensing and Registration. All CITY Vehicles shall be licensed and registered by CITY in the name of CITY.

M. Warranty. The AUTHORITY declares that

- (1) NEITHER CITY NOR CONTRACTOR IS THE MANUFACTURER OF THE CITY EQUIPMENT OR THE MANUFACTURER'S AGENT, AND NEITHER CITY NOR CONTRACTOR MAKES ANY EXPRESS OR IMPLIED WARRANTY OF ANY NATURE REGARDING THE CITY EQUIPMENT, INCLUDING, BUT NOT LIMITED TO: ITS MERCHANT ABILITY OR FITNESS- FOR ANY PARTICULAR PURPOSE; ITS DESIGN OR CONDITION; ITS WORKMANSHIP; ITS FREEDOM FROM LATENT DEFECTS; ITS COMPLIANCE WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION, OR CONTRACT; OR ITS NON-INFRINGEMENT OF ANY PATENT, TRADEMARK, OR LICENSE.
- (2) Provided that CITY or the manufacturer has supplied required warranty documents to CONTRACTOR, CONTRACTOR shall take all actions required to preserve any and all manufacturers' warranties regarding the CITY Equipment.
- (3) This Agreement shall not operate to release or waive any rights of CITY or CONTRACTOR against any person not a party hereto, including the manufacturer of the CITY Equipment.

N. Use of CITY Equipment Only. Unless otherwise expressly provided in this Agreement, CONTRACTOR shall, in providing the Transportation Services and Other Services, employ only Equipment specified in this agreement.

Section 4.2 Maintenance of CITY Equipment by CONTRACTOR

- A. Maintenance Requirements. At all times during the Agreement Term, CONTRACTOR shall:
- (1) Maintain all CITY Equipment in good mechanical condition in conformity with all applicable safety practices, laws, and regulations;
 - (2) Maintain all CITY Equipment in accordance with the terms and provisions of this Agreement, all maintenance policies, practices, procedures, conditions, and requirements of the CITY, and all manufacturers' maintenance schedules and warranty requirements; Perform all preventive maintenance required by CITY;
 - (3) Keep both the exterior and interior of all CITY vehicles neat, clean, and in first-class

condition at all times; and

- (4) Shall be responsible to ensure that all CITY Revenue Vehicles are maintained at all times so as to meet the requirements of the relevant agencies.

- B. Maintenance Records. CONTRACTOR shall prepare and maintain accurate records relating to all maintenance work performed by or for CONTRACTOR on all CITY Equipment. All such records shall comply with the provisions this Agreement and with all applicable CITY policies, practices, procedures, conditions, and requirements. CONTRACTOR shall maintain a separate maintenance file for each CITY vehicle containing all maintenance records pertaining thereto. CONTRACTOR shall also complete, maintain, and transmit to the AUTHORITY all maintenance forms and any other records requested by the AUTHORITY, including, without limitation, vehicle maintenance records, fuel consumption records, and all records required under CITY's Preventive Maintenance Program.

Section 4.3 Operation of CITY Equipment by CONTRACTOR

- A. General Operating Standard. CONTRACTOR shall use and operate all CITY Equipment only in accordance with the terms and provisions of this Agreement, and all applicable federal, state, and local laws and regulations and solely for the purpose of providing the Transportation Services and Other Services on behalf of the AUTHORITY. The CONTRACTOR shall not use the CITY Equipment for any other purpose without the express prior written approval of the AUTHORITY, which may be subject to such terms and conditions as THE AUTHORITY may require.
- B. Storage of CITY Equipment. CONTRACTOR shall store all CITY Equipment as directed by the AUTHORITY at the suitable location identified by the AUTHORITY. CITY Vehicles shall not be stored outdoors without the express prior written approval of the AUTHORITY and then only in accordance with such conditions as the AUTHORITY may require.
- C. Fare Boxes. Except as expressly approved in writing by the AUTHORITY, CONTRACTOR shall utilize only fare boxes and other electronic ticket-reading equipment provided by the AUTHORITY. CONTRACTOR shall install and maintain such fare boxes and ticket-reading equipment in good condition in all Revenue Vehicles.

Section 4.4 Services to Be Provided by CITY

- A. Bus Stop Sign and Signposts. The AUTHORITY will provide and install sufficient bus stop signs and signposts to cover the routes.
- B. Bus Shelters. The AUTHORITY will maintain bus shelters and agrees to install bus shelters and funding and conditions allow.
- C. Manufacturers' Warranties. The AUTHORITY will provide attended manufacturers' warranties on vehicles identified in Exhibit A.
- F. Mapping and GIS Assistance. The AUTHORITY will provide CONTRACTOR with mapping and GIS assistance to carry out route planning.

ARTICLE 5--REAL PROPERTY AND FACILITIES

Section 5.1 Use of Real Property and Facilities

CONTRACTOR agrees to, and shall, use the Real Property and Facilities, or the portions thereof, as provided by the **AUTHORITY** for the operation of the **CITY** Transit System and to use these solely for the purpose of providing Transportation Services and Other Services. The listing of all such property and facilities will be included as an Exhibit B to this agreement. The parties have entered into separate leases or other agreements governing the **CONTRACTOR's** right to possess and use any land or facilities owned by the **CITY**. Its term and provisions should, of course, be consistent with the purchase of service agreement. The lease and service agreement should each include a cross-default provision.

Section 5.2 Maintenance of Real Property and Facilities

CONTRACTOR agrees to maintain the Real Property and Facilities in first-class condition for their intended purposes throughout the Agreement Term.

ARTICLE 6-EMPLOYEES

Section 6.1 Compliance with Federal, State, and Local Laws

CONTRACTOR agrees that, with respect to persons employed by it to provide Transportation Services and Other Services, it will comply with all applicable federal, state, and local labor laws including, but not limited to, any and all laws relating to the minimum wages to be paid to its employees, limitations upon the employment of minors, minimum fair wage standards for minors, the payment of wages due employees, and all applicable regulations established to protect the health and safety of employees, passengers, and the public at large. **CONTRACTOR** also agrees to provide the employee protection required under Section 13(c) of the Federal Transit Act, as amended, 49 U.S.C. Section 5333(b), and for persons employed by it to provide Transportation Services and Other Services.

Section 6.2 Employment of Personnel

- A. General. **CONTRACTOR** shall be responsible for the selection, training, scheduling, supervision, discipline, termination, and all other functions related to personnel required to perform **CONTRACTOR's** obligations under this Agreement.

- B. Management. **CONTRACTOR** shall provide competent and professional management in accordance with **CITY** policies, practices, procedures, and standards. If such managerial services are not being provided, the **AUTHORITY** may send **CONTRACTOR** a written notice requesting **CONTRACTOR** to take corrective action within twenty-one (21) days. If **CONTRACTOR** fails to comply with such a request or if the action taken is unsatisfactory, the **AUTHORITY** shall no longer be obligated to pay salaries, fringe benefits, or travel and related expenses incurred in connection with such managerial services. In the event such failure to provide managerial services cannot be cured within said twenty-one (21)-day period notwithstanding diligent and continuous effort by **CONTRACTOR**, and **CONTRACTOR** shall have promptly commenced to cure the failure and shall have thereafter prosecuted the curing of same with diligence and continuity, then the period for curing such failure shall be extended for such time as may be necessary for curing such failure with diligence and continuity.

- C. Employees. CONTRACTOR shall employ only such persons as are competent and qualified to provide Transportation Services and Other Services in accordance with the requirements of this Agreement and CITY policies, practices, procedures and standards. All employees shall meet all applicable qualifications established by federal, state, and local laws and regulations. Drivers shall display proper courtesy toward passengers and maintain a neat and clean appearance. CONTRACTOR shall comply with all federal requirements relating to drug and alcohol testing. CONTRACTOR shall participate in driver training programs, if any, established by CITY or the AUTHORITY during the Agreement Term and shall comply with driver and safety standards.

Section 6.3 Employment Contracts

CONTRACTOR may deal with, and enter into written agreements with, its employees.

ARTICLE 7- NONDISCRIMINATION, EQUAL EMPLOYMENT, AND BUSINESS OPPORTUNITY

Section 7.1 Compliance with Federal, State, and Local Laws

CONTRACTOR shall comply with all applicable federal, state, and local anti-discrimination and equal employment and business opportunity laws and regulations, including, but not limited to, the Age Discrimination in Employment Act, as amended, 29 U.S.C. §§621et seq.; the Federal Transit Act, 49 U.S.C. §5332(b); Titles VI and VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§2000d, 2000e et seq.; the Civil Rights Acts of 1866 and 1871, 42 U.S.C. §§1981and 1983; the Americans with Disabilities Act of 1990, 42 U.S.C. §§12101et seq.; the Rehabilitation Act of 1973, as amended, 29 §794.

Section 7.2 Equal Employment Opportunity

CONTRACTOR shall comply with all of the affirmative action, equal employment opportunity, and minority business enterprise requirements.

ARTICLE 8- REPORTS, RECORDS, AND INSPECTIONS

Section 8.1 Records

- A. Creation and Maintenance. CONTRACTOR shall create and maintain at the location specified in Section 5.1 of this Agreement, or at such other location as THE AUTHORITY may approve in writing, full, accurate, and complete records of all Transportation Services and Other Services performed; all time spent; all materials, equipment, and supplies purchased; and all costs incurred in the performance of the Transportation Services and Other Services pursuant to this Agreement, including all records required by this Agreement, or any applicable law or regulation.
- B. Disposal or Destruction. Unless the AUTHORITY shall consent in writing to the destruction of any such records, and except for records required to be delivered to the AUTHORITY at the end of the Agreement Term, CONTRACTOR shall make said records available for review, inspection, and audit in accordance with Section 8.2 below during the entire Agreement Term and for 3 years thereafter, or such longer period as may be required by law or any applicable grant; or in the

alternative, may turn over all such documents to the **AUTHORITY** at the end of the Agreement Term; provided that prior to the disposal or destruction of any such record by **CONTRACTOR** following said period, **CONTRACTOR** shall give notice to the **AUTHORITY** of any record or records to be disposed of or destroyed and the intended date of disposal or destruction, which shall be at least sixty (60) days after the effective date of such notice. The **AUTHORITY** shall have sixty (60) days after receipt of any such notice to give notice to **CONTRACTOR** not to dispose of or destroy said record or records and to require **CONTRACTOR** to deliver such record or records to the **AUTHORITY** or its designee, at the **AUTHORITY's** expense, on a confidential basis if appropriate.

Section 8.2 Inspections and Audits

- A. Right of the **AUTHORITY**. The **AUTHORITY** shall have the right, with or without prior notice to **CONTRACTOR**, to review, inspect, and audit all Transportation Services and Other Services performed pursuant to this Agreement, and all information and records related thereto, at all reasonable times during and following the performance of Transportation Services and Other Services.
- B. Performance of Inspections and Audits. The **AUTHORITY** shall perform such review, inspection, or audit in a manner that will not unduly delay or interfere with **CONTRACTOR's** performance under this Agreement. **CONTRACTOR** shall cooperate with the **AUTHORITY** in any such review, inspection, or audit. The **AUTHORITY** may perform any such review, inspection, or audit through an officer, employee, or any designated agent or independent **CONTRACTOR**.

ARTICLE 9- INSURANCE AND RISK MANAGEMENT

Section 9.1 Insurance Required

CONTRACTOR shall, at all times material to this Agreement, maintain adequate liability and worker's compensation insurance in amounts determined by the **CITY** and its insurance provider. The expense of said insurance to the **CONTRACTOR** shall be considered a Reimbursable Expense.

Section 9.2 Additional Insureds

All Required coverage shall name the following persons as additional insured parties: the **AUTHORITY**, the **CITY** and its boards, and the **CONTRACTOR** and their employees, agencies, and officers for their individual interests in the joint venture. The coverage afforded the additional insured's shall be primary insurance for the additional insured's with respect to claims arising out of operations performed by or on behalf of **CONTRACTOR**. If the additional insured's have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurance companies' liability under the insurance policies **CONTRACTOR** maintains shall not be reduced by the existence of such other insurance.

Section 9.3 Insurance Companies and Policies

All Required coverage shall be provided by insurance companies acceptable to and approved by the **AUTHORITY**. Required coverage may be in any combination of primary, excess, and umbrella policies. Any excess or umbrella policy must provide excess coverage over underlying insurance on a following-form basis

such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss. The **CONTRACTOR** shall furnish to the **AUTHORITY** two (2) copies of a certificate of insurance and one (1) copy of an insurance policy for each Required Coverage. Each such certificate and policy shall be in a form satisfactory to the **AUTHORITY** and shall provide that no change, modification of, or cancellation of the insurance represented by it shall become effective until the expiration of thirty (30) days after written notice thereof shall have been given by the insurance company to the **AUTHORITY**.

Section 9.4 Subcontractor Insurance

Unless otherwise approved by the **AUTHORITY**, **CONTRACTOR** shall not allow any subcontractor to commence or continue any part of the Transportation Services or Other Services until and unless such subcontractor provides and has in force insurance coverage equal to those required of **CONTRACTOR** by this Article.

Section 9.5 Participation Required.

CITY Vehicles used in the provision of Transportation Services pursuant to this Agreement will be in the **CONTRACTOR**'s insurance program. The **CONTRACTOR** will provide coverage for the vehicles and liability coverage for the **AUTHORITY**. For their **CITY**-owned vehicles **CITY** agrees to investigate and defend in cases of liability or property damage arising out of the provision of Transportation Services and Other Services pursuant to this Agreement.

Section 9.6 Reporting Accidents and Potential Claims.

CONTRACTOR shall immediately notify the **AUTHORITY** & **CITY** of any incidents that have resulted, or may result, in property damage or bodily injury.

Section 9.7 Claims Administration and Defense

CONTRACTOR shall, and shall require its employees to, cooperate with and assist the **AUTHORITY** & **CITY** and any claims service agencies, investigators, and attorneys employed by or on behalf of **CITY** in the administration, investigation, and defense of any and all claims for bodily injury or property damage asserted against **CITY** or **CONTRACTOR** arising out of the provision of Transportation Services or Other Services pursuant to this Agreement. The **CONTRACTOR**'s failure to comply with the requirements of this section shall relieve **CITY** of any and all obligations that **CITY** may have under this Article 9.

Section 9.8 Loss Prevention

CONTRACTOR shall, upon written notice from the **AUTHORITY** specifying and documenting claims or other evidence of incompetence, inattention, carelessness, or other fault on the part of **CONTRACTOR** or any of **CONTRACTOR**'s employees, promptly take all lawful and reasonable steps to prevent claims or losses as a result of such incompetence, inattention, carelessness, or other fault. This section shall not, however, be construed to require the **AUTHORITY** to give any such notice or to require **CONTRACTOR** to take any action in violation of its obligations under any labor agreement or other employment contract.

Section 9.9 Litigation against CONTRACTOR

If, during the term of this Agreement, any lawsuits or proceedings are filed or initiated against **CONTRACTOR** or any subcontractor or supplier of **CONTRACTOR**, before any court, commission, board, bureau, agency, unit of government or subunit thereof, arbitrator, or other instrumentality, that may materially affect or inhibit the ability of **CONTRACTOR** to perform its obligations under, or otherwise to comply with, this Agreement, **CONTRACTOR** shall promptly deliver a copy of the complaint or charge related thereto to the **AUTHORITY** and shall thereafter keep the **AUTHORITY** fully informed concerning all aspects of such lawsuit or proceeding.

ARTICLE 10-INDEMNIFICATION

Section 10.1 General

Except as expressly provided in Article 9 of this Agreement, **CONTRACTOR** agrees to assume liability for and to indemnify and hold harmless the **AUTHORITY**, its board members, officers, employees, agents, and attorneys from and against any and all liabilities, losses, damages, costs, payments, and expenses of every kind and nature (including attorneys' fees and disbursements) ("Liabilities") as a result of claims, demands, actions, suits, proceedings, judgments, or settlements ("Claims") arising out of, or alleged to have arisen out of, or in any way relating to, or alleged to be relating to, the negligence of **CONTRACTOR**, or the execution, performance, nonperformance, or enforcement of this Agreement, including the enforcement of this indemnification provision, upon notice from the **AUTHORITY** or **CITY** of any such liability or claim that the **AUTHORITY** or **CITY** believes to be covered by this section.

Section 10.2 **CONTRACTOR**'s Damages

Except as expressly provided in Article 9 of this Agreement, neither the **AUTHORITY** or **CITY** shall be responsible to **CONTRACTOR** or to any of its officers, employees, agents, or attorneys for any loss of business or other damage caused by an interruption of Transportation Services, or for the time lost in repairing or replacing any **CITY** Equipment, or for any loss, injury, or damage arising out of or relating to the **AUTHORITY**'s or **CITY**'s failure to deliver **CITY** Equipment, or for any other losses or damages sustained by the **CONTRACTOR** hereunder. Except as expressly provided in Article 9 of this agreement, neither the **AUTHORITY** nor **CITY** assumes liability or responsibility for any acts or omissions of **CONTRACTOR**, or of **CONTRACTOR**'s officers, employees, agents or attorneys, or for any property of **CONTRACTOR** or any other person that is damaged, lost, or stolen in the performance, or as a result of the performance, of this Agreement.

ARTICLE 11- BUDGET AND ACCOUNTING

Section 11.1 Transportation and Other Services Revenue

- A. Collection. **CONTRACTOR** shall comply with **CITY** policies, practices, and procedures relating to the collection, security, accounting and remittance of all Transportation and Other Service Revenues.
- B. Retention by Contractor. All Transportation and Other Services Revenue collected during any month shall be retained by **CONTRACTOR** and (1) accounted for in the monthly report for the month during which it was collected and two (2) shown on the monthly income and expense statement.

Section 11.2 Accounting and Reporting Standards

CONTRACTOR shall maintain its books and records and shall prepare, maintain, and file reports relating to this Agreement and Transportation Services and Other Services in accordance with generally accepted government accounting principles; Section 15 of the Federal Transit Act; and any documentation submitted by **CONTRACTOR**, and approved by the **AUTHORITY**, in support of the fees paid to **CONTRACTOR**. In case of any conflict in the aforesaid standards, **CONTRACTOR** shall seek specific direction from the **AUTHORITY** and, pending receipt of such direction, shall comply with that standard that most fairly, accurately, and completely records and reports the and effectively implement the approved plan or plans. In the event of the **AUTHORITY** non-approval, the **AUTHORITY** shall either direct **CONTRACTOR** to submit a new or revised plan of corrective action for **CITY**'s approval within a stated time or direct **CONTRACTOR** to implement a plan of corrective action developed by the **AUTHORITY**, and **CONTRACTOR** shall comply with such directive.

Section 11.3 Budget Amendments

- A. Budget Amendments Requested by Contractor. **CONTRACTOR** may make a written request for an amendment to the Approved Budget when circumstances beyond the control of **CONTRACTOR** or circumstances not known or reasonably ascertainable prior to the beginning of the Agreement Term render it essential, in the opinion of **CONTRACTOR**, that the Approved Budget be amended. The **AUTHORITY** shall consider such requests in good faith; however, even in such circumstances, the **AUTHORITY** shall be under no obligation whatsoever to approve any such request. **CONTRACTOR** acknowledges that limitations on the **AUTHORITY**'s own funding and other obligations of **CITY** will make it difficult or impossible for the **AUTHORITY** to approve any amendment to the Approved Budget that results in an increase of the Approved Budget Maximum and that any Approved Budget amendment is therefore likely to be limited to transfers between Line Items. Notwithstanding the foregoing, but subject to the availability of **CITY** funds, the **AUTHORITY** nor **CITY** shall unreasonably refuse to approve any **CONTRACTOR** request for an amendment to the Approved Budget when such amendment is limited to the reimbursement of materially additional costs incurred by **CONTRACTOR** as a direct result of significant changes in operating practices directed by the **AUTHORITY** or **CITY** after approval of the Approved Budget.
- B. Budget Amendments Initiated by CITY. Except when any other agreement between the **AUTHORITY** and **CONTRACTOR** provides otherwise, **CITY** may unilaterally require an amendment to the Approved Budget in any of the following Circumstances:
- (1) When the funds available to the **AUTHORITY** for payments under this Agreement are insufficient to fully fund the Approved Budget Maximum;
 - (2) When circumstances beyond the reasonable control of the **AUTHORITY**, not known or reasonably ascertainable at the beginning of the Agreement Term, require a reduction in the Approved Budget Maximum; or
 - (3) When a change in routes or schedules authorized pursuant to Section 3.2B, or any other change in the Transportation Services and Other Services to be provided pursuant to this Agreement, results in a saving of Reimbursable Expenditures, but only in the amount of such savings.

Section 11.4 Capital Expenditures

- A. Capital Expenditures. Capital Expenditures for purposes of this Agreement shall be defined as expenditures in excess of \$25,000 for the purpose of acquiring or improving real property, buildings or equipment.
- B. Prior Approval of Capital Expenditures Required. Notwithstanding the availability of funds in the Approved Budget, CONTRACTOR shall not make, or become obligated to make, any Capital Expenditure in excess of \$25,000 for any single item without first obtaining the approval of the AUTHORITY pursuant to this subsection. Any such Capital Expenditure made or obligated without such prior approval shall be the sole responsibility of CONTRACTOR and no payment under this Agreement shall be sought or made with respect to such Capital Expenditure.
- C. Approval Procedures. Except in cases of emergency, approval for Capital Expenditures shall be requested by CONTRACTOR in writing. Such requests shall be made as far as possible in advance of the date when CONTRACTOR desires to make or to become obligated for such Capital Expenditures. Such request shall describe the purpose of the Capital Expenditure and the necessity therefore with particularity. After receiving all information that it deems necessary to evaluate any such request and the available funding options, the AUTHORITY shall approve or disapprove the request in writing. In any case of emergency where delay of a Capital Expenditure that could not have reasonably been foreseen would result in an unacceptable interference with or disruption of Transportation Services or Other Services or would create a threat of personal injury or property damage, CONTRACTOR may request the AUTHORITY approval by telephone, followed by a confirming written request. The AUTHORITY shall respond to such request as soon as reasonably feasible.

ARTICLE 12-TERM

Section 12.1 Term

The term of this Agreement shall be five (5) years.

Section 12.2 Termination for Impossibility of Performance

- A. Basis for Impossibility. This Agreement may be terminated, in whole or in part, upon ninety (90) days written notice given by the AUTHORITY to CONTRACTOR in the event that State or local or any other funding source fails in any fiscal year to appropriate or otherwise make available sufficient funds, as determined in the sole discretion of the AUTHORITY, to cover payments to be made to CONTRACTOR pursuant to Article 12 hereof, or if Equipment necessary to perform the Transportation Services and Other Services hereunder is unavailable for any reason, as determined by the sole discretion of the AUTHORITY.
- B. Termination During or After Performance. The termination of this Agreement shall not be in any manner prevented or affected by the fact that CONTRACTOR may have already partially or fully performed its obligations under this Agreement in respect to any unpaid part or parts of this Agreement by the time it is determined by the AUTHORITY that it will be unable to pay the remaining unpaid part or parts of this Agreement.

Section 12.3 Termination for Contractor Default

This agreement shall be terminated, and the Agreement Term shall end, thirty (30) hours after written notice of such termination given by the **AUTHORITY** to Contractor in the event that **CONTRACTOR** shall, for any reason, other than as specified in Section 3.5 of this Agreement: Cancel, eliminate, or reduce any route or diminish service or scheduling along any route, except for changes approved by the **AUTHORITY**, minor operational changes made pursuant to Section 3.2 of this Agreement, and changes due to normal seasonal route rescheduling identical to such rescheduling in the calendar year prior to the Agreement Term or failure to file or implement a plan of corrective action when required to do so. The **AUTHORITY** may also terminate this contract for any breach by the **CONTRACTOR** that is incurred after fifteen (15) days, as provided in Section 12.5.

Section 12.4 Remedies

In the event of a breach or an alleged breach of this Agreement by either party, either party may, by suit, action, mandamus, or any other proceeding, in law or in equity, including specific performance, enforce or compel the performance, or recover damages for nonperformance, of this Agreement, or both. Any cost or expense associated with pursuing any such remedy shall not be a Reimbursable Expenditure under this Agreement if the **CONTRACTOR** is the prevailing party in such litigation. Venue of any action to enforce or interpret this Agreement shall be in Williamson County, Tennessee.

Section 12.5 Notice and Cure

Neither party may exercise the right to bring any suit, action, mandamus, or any other proceeding pursuant to this Agreement without first providing written notice to the other party of the breach or alleged breach, and allowing a period of fifteen (15) days for the curing of said breach or alleged breach; provided, however, that in the event such violation or failure cannot be cured within said fifteen (15) day period notwithstanding diligent and continuous effort by the party receiving notice and said party shall have promptly commenced to cure the violation or failure and shall have thereafter prosecuted the curing of same with diligence and continuity, then the period for curing such violation or failure shall be extended for such period as may be necessary for curing such violation with diligence and continuity.

ARTICLE 13- COVENANTS AND REPRESENTATIONS

Section 13.1 General

CONTRACTOR hereby makes the covenants and representations with and to the **AUTHORITY** as described in this Article and hereby agrees to abide by each and every one of them.

Section 13.2 Existence and Power

CONTRACTOR is a duly organized and validly existing community non-profit organization, in good standing under the laws of the State of Tennessee, and has the legal power and authority to provide, engage in, and carry out the Transportation Services and Other Services. **CONTRACTOR** shall maintain its identity as a community non-profit and shall make no attempt to cause its existence to be abolished during the Agreement Term.

Section 13.3 Authorization

CONTRACTOR has been duly authorized to execute this Agreement by its Board of Directors, and the execution and delivery of this Agreement by all of the parties signatory hereto shall constitute a valid and binding obligation of **CONTRACTOR**, enforceable in accordance with its terms, and the making of and compliance by **CONTRACTOR** with the terms and conditions of this Agreement will not result in any breach or violation of, or default under, any judgment, decree, mortgage, contract, agreement, indenture, or other instrument applicable to **CONTRACTOR**.

Section 13.4 Approvals Received

All such approvals, consents, permits, licenses, certificates, authorizations, or modifications as may be required to permit the performance by **CONTRACTOR** of its obligations under this Agreement have been obtained from the appropriate governmental authorities or other persons or entities.

Section 13.5 No Material Litigation

No litigation, investigation, or proceeding of or before any court, commission, bureau, agency, unit of government or subunit thereof, arbitrator, or other instrumentality is pending or, to the knowledge of **CONTRACTOR**, threatened by or against **CONTRACTOR**, or against any of its properties or revenues (a) with respect to this Agreement, or (b) that is reasonably likely to have a material adverse effect on the operations, property, or financial condition of **CONTRACTOR**.

Section 13.6 No Default

CONTRACTOR is not in default under or with respect to any obligation in any respect that could be materially adverse to the business, operations, property, or financial condition of **CONTRACTOR** or that is reasonably likely to materially adversely affect the ability of **CONTRACTOR** to perform its obligations under this Agreement.

Section 13.7 No Burdensome Restrictions

No obligation of **CONTRACTOR** and no requirement of law materially adversely affect, or insofar as **CONTRACTOR** may reasonably foresee may so affect, the business, operations, property, or financial condition of **CONTRACTOR** or the ability of **CONTRACTOR** to perform its obligations under this Agreement.

Section 13.8 No Sale, Lease or Encumbrance

CONTRACTOR will not sell, lease, loan, mortgage, or in any manner dispose of the **CITY** Equipment or the Real Property, or any improvements or additions thereto, during the Agreement Term.

Section 13.9 Payment of Obligations

CONTRACTOR shall pay and discharge all of its obligations and indebtedness's with respect to the Transportation Services and Other Services and with respect to the **CONTRACTOR** Vehicles and Other **CONTRACTOR** Equipment, if any, provided, however, that any such obligation or indebtedness need not be paid if the validity thereof shall currently be contested in good faith by appropriate proceedings and if **CONTRACTOR** shall have set aside on its books adequate reserves with respect thereto, except that all such

obligations and indebtedness's shall be paid forthwith upon an adverse decision in such proceedings and the exhaustion of available appellate relief with respect thereto.

Section 13.10 Compliance with Agreements

CONTRACTOR shall comply with the provisions of existing leases, contracts, and agreements to which it is a party and that are material to **CONTRACTOR's** provision of the Transportation Services and Other Services. **CONTRACTOR** shall not, without the prior written approval of the **AUTHORITY**, enter into, renew, fail to renew, modify, or terminate any such contracts, leases, or agreements if such entry, renewal, failure to renew, modification, or termination will impair the performance by **CONTRACTOR** of the Transportation Services or Other Services or result in any material increase in Reimbursable Expenses or material reduction in Transportation and Other Services Revenues.

Section 13.11 Compliance with Applicable Laws

CONTRACTOR shall comply with all federal, state, and local statutes, laws, rules, regulations, and orders applicable to the Transportation Services and Other Services.

Section 13.12 Compliance with Grant Conditions

CONTRACTOR shall comply with all conditions of, and all laws and regulations and all **CITY** policies, practices, and procedures applicable to, any federal, state or local grant received by the **AUTHORITY, CITY** or by **CONTRACTOR** at any time with respect to the Transportation Services, the Other Services, the Equipment, or the Real Property and Facilities.

Section 13.13 Interest of Members of and Delegates to, Congress

No member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising from this Agreement.

Section 13.14 Restrictions on Lobbying

CONTRACTOR warrants and represents that: it will comply, and will require its subcontractors and suppliers to comply, with the requirements of 31U.S.C. § 1352 and 49 C.F.R. Part 20 regarding use of federal funds for lobbying;

ARTICLE 14- GENERAL PROVISIONS

Section 14.1 Complete Agreement

This Agreement, including the exhibits hereto and the Operating Manual, constitutes the entire agreement between the parties hereto with respect to Transportation Services and Other Services, and this Agreement supersedes any prior agreement between the parties, whether oral or written, with respect to Transportation and

Section 14.2 Amendments

No modification, addition, deletion, revision, alteration, or other change to this Agreement shall be effective unless and until such change is reduced to writing and executed and delivered by the authorized representatives of each of the parties hereto.

Section 14.3 Notices

Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be (A) personally delivered, or (B) delivered by a reputable overnight courier, or (C) delivered by certified mail, return receipt requested, and deposited in the U.S. mail, postage prepaid. Telecopy notices shall be deemed valid only to the extent that they are (i) actually received by the individual to whom addressed and (ii) followed by delivery of actual notice in the manner described in either (A), (B) or (C) above within three (3) business days thereafter. Unless otherwise expressly provided in this Agreement, notices shall be deemed received at the earlier of (x) actual receipt; or (y) one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (z) three (3) business days following deposit in the U.S. mail, as evidenced by a return receipt. Notices shall be directed to the parties at their respective addresses as follows:

For notices and communications to **CITY**:

CITY of Franklin

Attention: Abby Gambill – Traffic Operations Center Operator

109 3rd Avenue South

Franklin, TN 37064

Phone: (615) 791-3212

Email: Abby.Gambill@franklintn.gov

For notices and communications to **CONTRACTOR**:

Attention: _____

Address: _____

Phone: _____

Email: _____

By notice complying with the foregoing requirements of this Section, each party shall have the right to change the address or addressee or both for all future notices and communications to such party, but no notice of a change of address or addressee shall be effective until actually received.

Section 14.4 Calendar Days and Time

Any reference herein to "day" or "days" shall mean calendar and not business days. If the date for giving or receiving of any notice required to be given hereunder or the performance of any obligation hereunder falls on a Saturday, Sunday, or federal or State of Tennessee holiday, then said notice or obligation may be given or performed on the next business day after such Saturday, Sunday, or federal or State of Tennessee holiday. Any reference herein to time of day shall refer to local time for the CITY of Franklin, Tennessee.

Section 14.5 Governing Laws

This Agreement and the rights of the parties hereunder shall be interpreted and enforced in accordance with the internal laws, but not the conflict of laws rules, of the State of Tennessee.

Section 14.6 Changes in Law

Unless otherwise explicitly provided in this Agreement, any reference to laws, ordinances, rules, or regulations shall include such laws, ordinances, rules, or regulations as they may be amended or modified from time to time.

Section 14.7 Interpretation

This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, every provision of this Agreement shall be construed as though all parties hereto participated equally in the drafting thereof. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

Section 14.8 Severability

The provisions of this Agreement shall be interpreted possible to sustain their legality and enforceability as a whole. If any provision of this Agreement is construed or held to be void, invalid, illegal, or unenforceable in any respect, the remaining part of that provision and the remaining provisions of this Agreement shall not be affected, impaired, or invalidated thereby, but shall remain in full force and effect. The unenforceability of any provision of this Agreement in a specific situation shall not affect the enforceability of that provision in any other situation.

Section 14.9 No Third Party Beneficiaries

Nothing in this Agreement shall create, or be construed to create, any third party beneficiary rights in any person or entity not a signatory to this Agreement.

Section 14.10 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original.

Section 14.11 Independent Contractor

In the performance of the Transportation Services and Other Services pursuant to this Agreement, **CONTRACTOR** is an independent **CONTRACTOR** with the authority to control and direct the performance of the details of the Transportation Services and Other Services to be performed pursuant to this Agreement. All personnel necessary for **CONTRACTOR**'s performance pursuant to this Agreement shall be employees of **CONTRACTOR** or of **CONTRACTOR**'s subcontractors. None of the said personnel shall be deemed for any purpose to be employees, agents, or representatives of the **AUTHORITY** or **CITY**. No requirement of approval or other provision of this Agreement and no subsequent conduct of the **AUTHORITY** or **CONTRACTOR** shall be construed to create the relationship of principal and agent, partners, or joint ventures between the **AUTHORITY** and **CONTRACTOR**. Section 14.12 No Assignment. **CONTRACTOR** shall not assign either its rights or its obligations under this Agreement without the prior written consent of the **AUTHORITY**, which consent may be granted or withheld at the sole discretion of the **AUTHORITY**. Any attempted or purported assignment of such rights or obligations

without the prior written consent of the **AUTHORITY** shall be void and of no effect. Any successor to **CONTRACTOR's** rights under this Agreement shall be bound by, and shall comply with, all of the provisions, conditions, and requirements of this Agreement. If the parties wish to allow the assignment of the Agreement under certain circumstances, this provision can be modified accordingly.

Section 14.13 Non waiver

The **AUTHORITY** shall not be deemed to have waived any right, provision, covenant, condition, or payment under this Agreement unless such waiver is in writing and signed by an authorized officer or director of the **AUTHORITY**. No delay or omission by the **AUTHORITY** in exercising any right under this Agreement, and no failure by the **AUTHORITY** to enforce any provision, covenant, or condition of this Agreement, and no payment or receipt of any money by the **AUTHORITY** under this Agreement, shall operate as a waiver of such right, provision, covenant, condition, or payment, or any other right, by the **AUTHORITY**. All the rights and remedies of the **AUTHORITY** under this Agreement shall be cumulative and not exclusive and may be exercised singly or concurrently by the **AUTHORITY**. The waiver or exercise of any remedy by the **AUTHORITY** shall not be construed as a waiver of any other remedy available under this Agreement or under general principles of law or equity.

ARTICLE 15 – FEDERAL SUPPLEMENTARY CONDITIONS TO THE CONTRACT

Section 15.1 Project Implementation

A. No Federal Government Obligations to Third Parties.

The **CONTRACTOR** acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the **CONTRACTOR**, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(1) The **CONTRACTOR** agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

B. Federal Changes - CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Grant Agreement, as they may be amended or promulgated from time to time during the term of this contract. CONTRACTOR's failure to so comply shall constitute a material breach of this contract.

C. Suspension and Debarment - This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The CONTRACTOR is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing this agreement, the CONTRACTOR certifies as follows: The certification in this clause is a material representation of fact relied upon by the Client. If it is later determined that the CONTRACTOR knowingly rendered an erroneous certification, in addition to remedies available to the Client, the Federal Government may pursue

available remedies, including but not limited to suspension and/or debarment. The **CONTRACTOR** agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The **CONTRACTOR** further agrees to include a provision requiring such compliance in its lower tier covered transactions.

D. False or Fraudulent Statements or Claims.

- (1) The **CONTRACTOR** acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the **CONTRACTOR** certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the **FTA** assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the **Contractor** further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the **CONTRACTOR** to the extent the Federal Government deems appropriate.
- (2) The **CONTRACTOR** also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by **FTA** under the authority of 49 U.S.C. § 5307 Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(a)(1) on the **CONTRACTOR**, to the extent the Federal Government deems appropriate.
- (3) The **CONTRACTOR** agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by **FTA**. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Section 15.2 Incorporation of FTA Terms

Incorporation of Federal Transit Administration (**FTA**) Terms – The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in **FTA** Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all **FTA** mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The **CONTRACTOR** shall not perform any act, fail to perform any act, or refuse to comply with any **MTA** requests which would cause **MTA** to be in violation of the **FTA** terms and conditions.

Section 15.3 ENVIRONMENTAL, RESOURCE CONSERVATION, AND ENERGY REQUIREMENTS

- A. Energy Requirements - The **CONTRACTOR** agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state of Ohio energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- B. Clean Water

- (1) The **CONTRACTOR** agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The **CONTRACTOR** agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The **CONTRACTOR** also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

C. Clean Air

- (1) The **CONTRACTOR** agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The **CONTRACTOR** agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The **CONTRACTOR** also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Section 15.4 DRUG AND ALCOHOL TESTING

The Drug and Alcohol testing provisions apply to Operational Service Contracts.

Drug and Alcohol Testing - The **CONTRACTOR** agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency or MTA, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The **CONTRACTOR** agrees further to certify annually its compliance with Parts 653 and 654 before March 1st and to submit the Management Information System (MIS) reports before March 1st to Pat Downs, Capital Grants Administrator, 130 Nestor Street, Nashville, TN 37210. To certify compliance the **CONTRACTOR** shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

Section 15.5 TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a **CONTRACTOR** recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

A. The **CONTRACTOR** agrees to comply with applicable transit employee protective requirements as follows:

- (1) **General Transit Employee Protective Requirements** - To the extent that FTA determines that transit operations are involved, the **CONTRACTOR** agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 CFR Part 215, and any amendments

thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The **CONTRACTOR** agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letters. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

- (2) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub recipient for which work is performed on the underlying contract, the **CONTRACTOR** agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The **CONTRACTOR** agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
- (3) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the **CONTRACTOR** agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto. (2) The **CONTRACTOR** also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

Section 15.6 CHARTER BUS and SCHOOL BUS REQUIREMENTS

Charter Service Operations – The **CONTRACTOR** agrees to comply with 49 USC 5323 9d) and 49 CFR Part, which provides that recipients and sub recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be “incidental,” i.e., it must not interfere with or detract from the provision of mass transportation. The School Bus requirements apply to the following type of contract: Operational Service Contracts. Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and sub recipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and sub recipients may not use federally funded equipment, vehicles, or facilities.


Section 15.7 CERTIFICATION REGARDING LOBBYING

The undersigned [**CONTRACTOR**] certifies, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]
- C. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. [Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.] The **CONTRACTOR** certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the **CONTRACTOR** understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

In WITNESS WHEREOF, the parties hereto have caused this Agreement to be made, effective and executed as of the 19 day of June, 2014 by their respective authorized officials.

FRANKLIN TRANSIT AUTHORITY




 Franklin Transit Authority
 Chairman



STATE OF TENNESSEE)
 COUNTY OF WILLIAMSON)

Personally appeared before me, Preston Elliott, with whom I am personally acquainted, (or proved to me on the basis of satisfactory evidence), and who, after being first duly sworn, acknowledged himself to be the Chair of the Franklin Transit Authority, and that as such, being authorized so to foregoing instrument for the purposes therein contained



 Notary Public

My commission expires: January 21, 2018

THE TRANSPORTATION MANAGEMENT ASSOCIATION GROUP

Julian Bibb
By: Julian Bibb
Its: Chairman

STATE OF TENNESSEE)
COUNTY OF WILLIAMSON)

Personally appeared before me, Julian Bibb, with whom I am personally acquainted, (or proved to me on the basis of satisfactory evidence), and who, after being first duly sworn, acknowledged him/herself to be the Chairman of The Transportation Management Association Group, and that as such, being authorized so to foregoing instrument for the purposes therein contained

Marlynn M. Lee
Notary Public
My commission expires: January 21, 2018



Attest:

Eric Stuckey, CITY Administrator
CITY of Franklin, TN

Dr. Ken Moore, Mayor
CITY of Franklin, TN